

# SENATE BILL REPORT

## SB 6175

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As of February 6, 2014

**Title:** An act relating to modifying the tax appeal process.

**Brief Description:** Modifying the tax appeal process.

**Sponsors:** Senator Braun.

**Brief History:**

**Committee Activity:** Trade & Economic Development: 1/21/14, 1/30/14 [DPS-WM, DNP].  
Ways & Means: 2/05/14.

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### SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 6175 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Braun, Chair; Angel, Vice Chair; Baumgartner and Holmquist Newbry.

**Minority Report:** Do not pass.

Signed by Senators Chase, Ranking Member; Pedersen.

**Staff:** Jeff Olsen (786-7428)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Juliana Roe (786-7438)

**Background:** Board of Tax Appeals. The Washington State Board of Tax Appeals (Board) was established in 1967 as an independent agency to hear tax appeals. The Board is made up of three members who are appointed by the Governor, and who qualify by having experience and training in the field of state and local taxation. At the time of appointment, no more than two Board members may be members of the same political party. Board members receive a salary determined by the Governor. It is currently \$88,304 not including benefits. By way of comparison, the current salary for a superior court judge is \$171,251 not including benefits. The principal office of the Board is located in Olympia; however, the Board may hold hearings in other locations.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In addition to sales, use, and other excise tax cases appealed from Department of Revenue (DOR) decisions, the Board hears property tax appeals of decisions reached by the various county boards of equalization, as well as certain other types of cases generally related to property taxation. There is no filing fee for a taxpayer appealing a decision to the Board. Board proceedings may be conducted by one or more of the members, by administrative law judges, or by other hearing officers appointed by the Board. Cases filed with the Board are heard de novo meaning that the taxpayer is not bound to the same arguments, evidence, and other parts of the record made before DOR. The Board offers two quasi-judicial hearing options, an informal hearing and a formal hearing. Taxpayers often request informal hearings because the informal hearing procedures are designed for persons appearing without counsel.

Tax Appeal Process. Taxpayers seeking to challenge their tax assessment may file an appeal with the proper taxing authority. For excise tax appeals, a taxpayer may file a petition with DOR. If the taxpayer does not agree with the final decision from DOR, they may file an appeal with the Board. A taxpayer must pay all taxes, penalties, and interest in full before any action may be instituted in court to contest the amounts due. For property tax appeals, a taxpayer may file a petition with their county board of equalization challenging their property's valuation. County boards of equalization are independent bodies formed to hear property tax valuation cases. If a taxpayer does not agree with a decision from a county board of equalization, they may file a petition with the Board.

Model Tax Tribunal Act. The American Bar Association adopted the Model State Administrative Tax Tribunal Act in 2006 as a recommended model for states to adopt. The purpose of the act is to increase public confidence in the fairness of the state tax system by providing a taxpayer who has received an assessment a hearing of record before an independent agency with tax expertise before requiring the payment of the tax assessment.

**Summary of Bill (Recommended Substitute):** Qualifications for persons appointed to the Board are modified to include requiring substantial experience making the record in a tax case suitable for judicial review. The Governor is granted authority to appoint additional pro tempore members to the Board for a one-year term, which may be renewed for one additional year. Salaries for Board members may be no less than the salaries provided for superior court judges. The Board must operate on a full-time basis and must maintain hearing offices in King and Spokane counties in addition to its principal office in Olympia, Washington.

A taxpayer requesting a formal hearing must pay to the Board a \$250 fee. Informal hearings require a \$50 fee. The Board may waive the fee in certain cases due to financial hardship. The Board must stay collection of any assessment of DOR on petition of the taxpayer, unless the Board finds the assessment may not be collected at the conclusion of the stay or the taxpayer's appeal lacks merit. In formal hearings for excise tax appeals, the Board must award fees and other expenses to the prevailing party. The amount awarded to a taxpayer may not exceed \$50,000 and the amount awarded to DOR may not exceed \$2,500. Final decisions of the Board may be appealed directly to the Court of Appeals.

The Board must establish procedures for conducting mediation conferences between parties. Mediation conferences are not mandatory, and the Board must establish fees for conducting mediations.

A joint taskforce on the reform of the tax appeals process is created. Taskforce members include the chair and ranking members of the tax policy committees in the Senate and the House of Representatives, a representative of the Governor's Office, and a representative from the following agencies or organizations: the Administrator for the Courts, the Board, DOR, the Office of the Attorney General, the Association of Washington Counties, the Washington State Bar Association, the Association of Washington Business, the Counsel on State Taxation, and the University of Washington School of Law. The taskforce must make recommendations regarding improvements to the tax appeal process to the appropriate committees of the Legislature and the Governor by December 1, 2014.

**EFFECT OF CHANGES MADE BY TRADE & ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute):** The Board may deny a stay of collection of a tax assessment if the amount may not be collected at the conclusion of the stay or if the appeal lacks merit. Adds that DOR must grant or deny a taxpayer's petition within 120 days of filing. Restricts awarding of attorneys' fees to excise tax cases and limits the amount awarded to DOR to \$2,500. Creates a joint legislative taskforce to review the current performance of the tax appeal process and make recommendations to the Legislature by December 1, 2014.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Trade & Economic Development):**  
PRO: The Committee had a work session on the tax appeal process in November to learn about how to improve the process in Washington. There must be a balanced relationship between the taxpayer and their government. The work session considered a broad array of options for reforming the tax appeal process. There are a number of deficiencies in the current tax appeal process. The current Board is not an effective forum for handling complex excise tax cases; it is designed to handle a large volume of property tax cases. Most excise tax cases go directly to superior court, which is not an efficient process. One remedy is to increase the Board members' pay and authority. Decisions of the Board should be directly appealable to the Court of Appeals. The Board should be able to stay collection on taxes while a taxpayer is appealing their case before the Board. Awarding of attorneys' fees should ensure that only strong claims are filed and provide incentives for compromise. The Board may also conduct mediations to resolve cases quickly and efficiently.

CON: This is a complex issue that does have room for improvement, and there is support for the goals of improving the relationship between the taxpayer and government. It appears that the issue is with complex excise tax cases, and property tax cases are not necessarily the issue. There should be some efforts to address the current Board backlog.

OTHER: Assessors are more directly impacted by property taxes. The mediation process could be a challenge with the presumption of correctness in current law. There is a concern regarding awarding of attorneys' fees, which might provide incentive for attorneys to make sure they get their fees. The Board should have the discretion to award attorney fees, and the fees should be restricted more than the current proposed limit. Attorneys' fees may not be appropriate for tax appeals, and may shift taxpayers to informal decisions or superior court. The stay of collections standards are not specific, which may just lead to a delay in paying taxes.

**Persons Testifying (Trade & Economic Development):** PRO: Senator Braun, prime sponsor; Brett Durbin, Riddell Williams, citizens; Amber Carter, Assn. of WA Business.

CON: Brian Enslow, WA State Assn. of Counties.

OTHER: Monty Cobb, WA Assn. of County Officials; Kate Adams, DOR.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: The goal is to provide a meaningful independent prepayment review of tax claims. It accomplishes this with three main provisions. These provisions are staying collections of the tax assessments; reforming the Board to better handle excise tax cases; and streamlining the tax appeals process. Washington is one of a handful of states that does not provide a prepayment review of tax claims. This is an important part of a fair and impartial tax system. It is unfair to make taxpayers pay the disputed taxes before they can appeal their case. It may also be difficult for a taxpayer to find the money to pay this amount up front. The opportunity for a prepayment review is an important part of this bill. The majority of the fiscal impact is from the stay provision.

The stay portion of the bill is a policy matter for the Legislature to consider. You should take this seriously because it affects our financial books. We are relying on the money from taxpayers who are paying under protest, up front. Making this change would be a one-time shift in financial records and would keep you from constantly refunding money to taxpayers.

CON: We have many of the same concerns with this bill as DOR. There is exposure with regard to attorneys' fees. The addition of the taskforce to this bill is probably the best change. Modifying the tax appeal process results in a change to the tone and tenor of an entire agency. It would be beneficial to take time over the interim to slowly and with significant thought, discuss our options before making major changes.

OTHER: This bill has started an important conversation in reforming the tax appeal process, but it is still a conversation in its early stages. More time is needed to evaluate our options and balance competing interests. The substitute is better in some ways and worse in others. A few concerns include the following: the qualification of Board members, the potential pool of candidates would be limiting; the stay of collections, if not narrowly tailored it could be misused to delay tax payments; the attorney fees provisions; mediation prior to appeal; the 120-day deadline; and direct review to the Court of Appeals. Studying the tax appeal process over the interim may be more appropriate.

**Persons Testifying (Ways & Means):** PRO: Amber Carter, Assn. of WA Business; Brett Durbin, Riddell Williams.

CON: Monty Cobb, WA Assn. of County Officials.

OTHER: Kate Adams, DOR.